



Dispute Resolution Services

Page: 1

Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes CNC RP

Introduction

This hearing was convened as a result of the Tenant's Application for Dispute Resolution, made on May 15, 2018 (the "Application"). The Tenant applied for the following relief, pursuant to the *Residential Tenancy Act* (the "Act"):

- an order cancelling a One Month Notice to End Tenancy for Cause, dated May 9, 2018 (the "One Month Notice");
- an order that the Landlord make repairs to the unit, site, or property; and
- an order granting recovery of the filing fee.

The Tenant attended the hearing in person and was assisted by her nephew, D.D. The Landlord attended the hearing in person. All in attendance provided affirmed testimony.

The Tenant testified the Landlord was served with the Application package by registered mail. Although neither party could confirm the date of service, the Landlord acknowledged receipt. The Landlord testified the documentary evidence upon which he intended to rely was served on the Tenant by posting a copy on the Tenant's door. Although neither party could confirm the date of service of the Landlord's documentary evidence, the Tenant confirmed receipt. No issues were raised with respect to service or receipt of the above documents during the hearing. Pursuant to section 71 of the *Act*, I find the above documents are sufficiently served for the purposes of the *Act*.

The parties were given a full opportunity to present evidence orally and in written and documentary form, and to make submissions to me. I have reviewed all oral and written evidence before me that met the requirements of the Rules of Procedure, and to which I was referred. However, only the evidence relevant to the issues and findings in this matter are described in this Decision.

Preliminary and Procedural Matters

Residential Tenancy Branch Rule of Procedure 2.3 permits an arbitrator to exercise discretion to dismiss unrelated claims with or without leave to reapply. The most important issue to address is whether or not the tenancy will continue. Accordingly, I find it appropriate to exercise my discretion to dismiss the Tenant's claim for repairs to the rental unit, with leave to reapply at a later date, as appropriate.

Issue to be Decided

Is the Tenant entitled to an order cancelling the One Month Notice?

Background and Evidence

The parties agreed the tenancy began about 22 years ago. The Tenant rents a 1-bedroom apartment in the rental property. Neither the Tenant nor the Landlord was able to confirm the current rent during the hearing. The Tenant suggested rent of \$916.00 per month is due on the first day of each month. The Landlord confirmed the Tenant paid a security deposit of \$270.00 at the beginning of the tenancy, which the Landlord holds.

The Landlord testified the One Month Notice was served on the Tenant by posting a copy to the door of the Tenant's rental unit on May 10, 2018. The Tenant acknowledged receipt on that date. The Landlord issued the One Month Notice on the following bases:

- Tenant or a person permitted on the property by the Tenant has seriously jeopardized the health or safety or lawful right of another occupant or the Landlord
- Tenant has engaged in illegal activity that has, or is likely to, adversely affect the quiet enjoyment, security, safety or personal well-being of another occupant or the Landlord
- Tenant has engaged in illegal activity that has, or is likely to, jeopardize a lawful right or interest of another occupant or the Landlord
- Tenant has assigned or sublet the rental unit/site without the landlord's written consent

Specifically, the Landlord testified the Tenant sublet the rental unit without authorization, contrary to the tenancy agreement. He stated that an individual, M.A., sublet the rental unit from the Tenant. The Landlord testified the Tenant is a member of the tenant's association and is aware of the rules. In addition, the Landlord testified that the Tenant lives in her own home and has rarely occupied the rental unit for three years.

Further, the Landlord testified that the individual who sublet the apartment was involved with drugs and that multiple police officers attended the rental unit April 17, 2018. The parties agreed that M.A. was subsequently arrested. The Landlord also stated he and other tenants were disturbed by the sub-tenant and his acquaintances.

In reply, the Tenant acknowledged she has not been in the rental unit consistently for about 2 years. The Tenant also testified she lives with her brother because she requires assistance while she awaits hip replacement surgery. The Tenant's health concerns were supported by a letter from the Tenant's physician, dated July 7, 2018. Further, the tenant confirmed she rented a room in her apartment to M.A. for \$550.00 per month but denied she sublet the apartment. She testified she slept on the couch when she was there. Further, D.D. testified that the Tenant return to the rental unit at regular intervals while M.A. lived there.

In addition, D.D. testified that the Tenant asked M.A. to move after the police incident on April 17, 2018, which he did. The One Month Notice was issued on May 10, 2018, after M.A. moved out of the rental unit.

Analysis

Based on the documentary evidence and oral testimony provided during the hearing, and on a balance of probabilities, I find:

Section 47 of the *Act* permits a Landlord to take steps to end a tenancy for cause in the circumstances described therein. In this case, the bases for wishing to end the tenancy are described above. After careful consideration of the evidence and submissions of the parties, I find the Tenant sublet her apartment without the Landlord's consent, contrary to the terms of the *Act* and the tenancy agreement. Although the Landlord testified that the sub-tenant's acquaintances attended the property and disturbed other tenants, I find there was insufficient evidence in support.

Rather, I find that the Tenant asked M.A. to vacate the rental unit and that he did so. It appears that the issues presented by M.A. have been addressed. Accordingly, I find there is insufficient evidence before me to uphold the One Month Notice. The One Month Notice is cancelled. The tenancy will continue until otherwise ended in accordance with the *Act*.

Having been successfully, I also order that the Tenant is entitled to recover the filing fee paid to make the Application, which I order may be deducted from a future rent payment, at the Tenant's discretion.

The Tenant is cautioned that section 34(1) of the Act and paragraph 17 of the tenancy agreement confirm that a tenant is not permitted to assign a tenancy agreement or sublet a rental unit without the landlord's written consent. Failure to comply with the terms of the Act and the tenancy agreement may result in a further notice to end tenancy being issued by the Landlord and the end of the tenancy.

Conclusion

I order that the One Month Notice is cancelled. The tenancy will continue until otherwise ended in accordance with the *Act*.

This decision is made on authority delegated to me by the Director of the Residential Tenancy Branch under Section 9.1(1) of the *Residential Tenancy Act*.

Dated: July 12, 2018

Residential Tenancy Branch